

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

PATRICK ANDREW TURLEY	§	
v.	§	CIVIL ACTION NO. 6:17cv238
C.E. MONROE	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Patrick Turley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Turley's lawsuit form named Warden C.E. Monroe as the sole defendant, but was otherwise blank. The Magistrate Judge ordered him to file an amended complaint setting out a short and plain statement of his claims, as required by Fed. R. Civ. P. 8 and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Magistrate Judge also directed that Turley pay the statutory filing fee or furnish an application for leave to proceed *in forma pauperis* which was accompanied by a certified *in forma pauperis* data sheet. Turley was advised that commissary slips were not an acceptable substitute for the data sheet.

In response to these orders, Turley filed a letter to the Court laced with racial invective and two motions for leave to proceed *in forma pauperis* which were accompanied by commissary slips. He also filed an amended complaint which wholly failed to set out sufficient facts which, taken as true, stated a claim for relief which was plausible on its face.

After review of the pleadings, the Magistrate Judge issued a Report recommending dismissal of the lawsuit for failure to prosecute and failure to state a claim upon which relief may be granted. The Magistrate Judge specified that this dismissal should be without prejudice so as to allow Turley to correct the deficiencies in his pleadings and his application for leave to proceed *in forma pauperis* and refile his lawsuit if he so chooses. Turley received a copy of this Report but filed no objections thereto; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 27) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and for failure to state a claim upon which relief may be granted. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered and Signed

Mar 14, 2018



Ron Clark, United States District Judge